HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

W.P.No.9504 of 2004

Dated 9th August, 2005

Between:

Nekkanti Sita Mahalakshmi,

W/o.Veera Venkata Satyanarayana,

Aged about 29 years, R/o.D.No.6-17

Ravindranagar, Turangi, Kakinada,

East Godavari District .. Petitioner

And

The Government of Andhra Pradesh, rep.

by its Secretary, Revenue Department,

Secretariat, Hyderabad and others .. Respondents

HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

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W.P.No.9504 of 2004

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ORAL ORDER:

When W.V.M.P.No.1970 of 2004 came up for hearing, both the parties have consented for disposal of the writ petition itself. Hence, the writ petition is taken up for final hearing and is being disposed of by this order.

The petitioner claims to have purchased Plot No.12 admeasuring 50

square yards under a registered sale deed and thereafter, he put up a thatched hut therein. When the 4th respondent-Gram Panchjayat initiated proceedings for eviction of the petitioner on the ground that the site in occupation is meant for public rasta, the petitioner filed W.P.No.885 of 2002. The said writ petition came to be dismissed on 28.3.2002 at the admission stage with the following observation:

> *"This Court, while ordering notice before admission on 17.1.2002, granted stay of dispossession.*
>
> *After receiving notices, the learned Government Pleader for Revenue appears for the respondents and submits that the petitioner has no cause of action to file the writ petition and that the respondents have never attempted to dispossess or evict the petitioner from the land in question. In view of this, the writ petition is filed on mere apprehension and the same is accordingly dismissed at the stage of admission. No order as to costs."*

Subsequently, the 4th respondent issued a telegram to the petitioner to remove the encroachment within 48 hours, which prompted the petitioner to approach this Court by filing this writ petition.

The 4th respondent filed Counter affidavit wherein he stated that notice was sent to the petitioner on 21.5.2004 directing him to remove the encroachment within three days and the said notice was returned unclaimed and therefore, a telegraphic notice was sent to him on 1.6.2004. I deem it appropriate to refer to the relevant portion in the counter affidavit and it reads thus:

> *"It is submitted that the members of the Gram Panchayat again passed another resolution requesting the Revenue Divisional Officer to do justice for the encroachers by keeping their encroachments. Again, the residents of Ravindranagar submitted a representation to the District Panchayat Officer requesting to remove the encroachments to the Panchayat road in December 2003 and the District Panchayat Officer in turn forwarded the same to this respondent for taking necessary action. Then, this respondent issued notices for removal of encroachments to the writ petitioner and others on 10.12.2003. Again, the encroachers approached the District Panchayat Officer requesting to drop the action and a copy was marked to*

this respondent also. Again, the residents submitted another representation requesting to remove the encroachment of the Panchayat road by the writ petitioner and others on 11.2.2004. The same was forwarded to the Gram Panchayat along with a memo dated 19.5.2004 by the District Panchayat Officer, asking to submit a report within three days in respect of the said encroachments. Thereupon, the Gram Panchayat again issued notices to the encroachers including the writ petitioner herein in R.C.No.137/02, dated 21.5.2004 asking to remove the encroachments within three days from the date of receipt of the same. The said notice was dispatched to the writ petitioner and others through registered post with acknowledgement due on 21.5.2004. It was also informed to the public by beet of tom tom in the village. But the notices under the registered posts were returned unserved with an endorsement "Not Claimed. Hence, returned to sender". At that stage, the Gram Panchayat having left with no other option, again issued a telegraphic notice on 1.6.2004 asking to vacate the encroachments within 48 hours. The telegram notices were served on the writ petitioner herein as well as the other encroachers. Then, the writ petitioner filed the present writ petition and obtained stay orders from this Hon'ble Court vide its order dated 5.6.2004. Hence, this respondent is filing the present petition seeking vacation of the same."

Heard the learned counsel for the petitioner, the learned Government Pleader for Revenue appearing for the respondents 1 to 3 and the learned standing counsel appearing for the 4th respondent.

The learned counsel for the petitioner submits that the 4th respondent earlier tried to evict the petitioner, and therefore, the petitioner filed W.P.No.885 of 2002, which ended in dismissal on the statement made by the learned Government Pleader for Revenue that there was no attempt to dispossess or evict the petitioner from the land. He further submits that the 4th respondent, being a party to the earlier writ petition proceeded to demolish the thatched hut of the petitioner on the site in question without issuing any notice. It is further submitted that the action of the 4th respondent in taking steps to remove the thatched hut without serving notice on the petitioner is illegal, improper and in violation of principles of natural justice.

The learned standing counsel for the 4th respondent submits that notice was sent to the petitioner and the same was returned unclaimed and therefore, there is no illegality or irregularity on the part of the 4th respondent in taking steps in removing the encroachments made by the petitioner.

The material placed on record shows that the petitioner in the earlier writ petition complained of highhanded dispossession by the respondents from the site in question and the said writ petition came to be dismissed on the statement made by the learned Government Pleader for Revenue appearing for the respondents 1 to 3 that there was no move for such dispossession.

Now, it is contended by the learned standing counsel for the 4th respondent that there was no such statement made by the learned Government Pleader for Revenue in the writ petition. It is a matter of record that the 4th respondent did not chose to file counter affidavit in the said writ petition, and therefore, the 4th respondent cannot be permitted to contend that there was no such statement made by the learned Government Pleader for the respondents 1 to 3. It is further contended by the learned standing counsel for the 4th respondent that notice has been sent to the petitioner by registered post and the said notice was returned unserved with an endorsement thereon “Not Claimed”.

Without going further in the matter as to whether the notice has been sent to the petitioner or not, it is suffice to say that notice dated 21.5.2004 which has been filed along with the counter affidavit is construed as notice served on the writ petitioner. It is for the writ petitioner to submit a reply to the said notice within a period of four weeks, and thereupon, the 4th respondent has to consider the explanation to the notice in accordance with law within a period of two weeks.

Accordingly, the writ petition is disposed of. No costs.

09.08.2005

bcj